



**Juma v Kenya Medical Supplies Authority (Petition E160 of 2023)
[2024] KEELRC 13459 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13459 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E160 OF 2023
HS WASILWA, J
DECEMBER 18, 2024**

BETWEEN

CHARLES EZEKIEL JUMA PETITIONER

AND

KENYA MEDICAL SUPPLIES AUTHORITY RESPONDENT

RULING

1. The Court directed both parties on 20th November 2024 to file submissions only on the disputed amount of the judgement. The Respondent filed its written submission on 4th December 2024 and opposed the Petitioner’s position, asserting that the application dated 12th July 2024 does not seek to vary the consent recorded between the parties but instead calls for a determination of whether the decretal sum has been fully settled. The Respondent argues that the Petitioner has admitted to receiving payments totalling to Kshs. 11,116,304.95 on 5th April 2024 and Kshs. 225,532.45 on 22nd July 2024, leaving a disputed balance of Kshs. 627,067.35.
2. The Respondent avers, through documentary evidence attached to its supporting affidavit, that the disputed amount of Kshs. 627,067.35 was paid to the Staff Retirement Benefits Scheme Fund in compliance with Paragraph 8 of the decree issued on 25th March 2024 and Sections 9 and 10 of the *Employment Act*, 2007. This evidence has not been controverted by the Petitioner, who instead argues that the Respondent had no authority to make the said payment and demands the same amount be paid directly to him.
3. The Respondent relies on *Daniel Kibet Mutai & 9 Others v Attorney General* [2019] eKLR, where the Court of Appeal held that uncontroverted affidavit evidence is assumed to be admitted as factual evidence. The Petitioner has not provided evidence to dispute the payment made to the Staff Retirement Benefits Scheme Fund nor verified the status of his pension contributions. The Respondent maintains that the payment to the fund was expressly provided for under the decree and was in compliance with statutory obligations.



4. The Respondent submits that the Petitioner's claim lacks merit as it disregards the terms of the decree and statutory provisions governing pension contributions.
5. The Petitioner filed its written submissions dated 2nd December 2024, in response to the Respondent's application dated 17th July 2024 seeking a stay of execution of the warrant of attachment dated 21st June 2024, submitted that the decretal sum of Kshs. 111,968,904.74 arising from the consent judgment and decree dated 25th March 2024 had been partially paid, leaving an outstanding balance of Kshs. 627,067.35. This balance constituted the amount being executed through the impugned warrant of attachment.
6. In its ruling dated 14th November 2024, the Court declined to vary the consent judgment, finding the Respondent's application unmerited. The Court directed the parties to reconcile their figures to settle the claim, noting that a substantial portion of the decretal sum had already been paid.
7. The Petitioner submits that the Court, having issued its ruling, became functus officio and cannot revisit the terms of the consent judgment. The Petitioner asserts that the Respondent is effectively seeking to vary a consent judgment it voluntarily entered into, a position that is unacceptable under the law.
8. The Petitioner further submits that the figures had already been reconciled during negotiations that led to the consent judgment, and the outstanding balance of Kshs. 627,067.35 remains due and payable. The Petitioner emphasizes their right to enjoy the fruits of the judgment and urges the Court to uphold the execution of the warrant of attachment.
9. Having considered the submissions of both parties, the affidavits on record, and the applicable legal principles, this Court finds that the consent judgment recorded on 25th March 2024, as supplemented by the consent order of 24th April 2024, constitutes a binding agreement between the parties. The Court's ruling dated 14th November 2024 explicitly declined to vary the terms of the consent and directed the parties to reconcile their figures to facilitate settlement.
10. This Court is now functus officio regarding the terms of the consent judgment. Any disputes as to execution must align with the consent as recorded. Accordingly, the execution process shall proceed in conformity with the outstanding balance as determined under the consent judgment and decree.
11. I have examined all the submissions and averments of the parties herein. It is indeed true that this court declined to vary the consent of the parties leaving it to the parties to thrash out any outstanding issues.
12. From the consent, the amounts payable was 11968904.74 kshs which amount was to be paid less statutory deductions. The respondent admit that they paid this amount less 627,067.35 which they paid to the pension scheme. There was no agreement that the 600000 plus be paid to any pension scheme and if indeed the Respondent did this, this was done outside the consent of the parties which this court cannot vary. I therefore find that the 627067.35 is payable and the Respondent should make good as per the party's consent. Costs to the applicants. Those are the orders of this court.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 18TH DAY OF DECEMBER, 2024.

HELLEN WASILWA

JUDGE

Order



In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

HELLEN WASILWA

JUDGE

